

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

ACTIVEVIDEO NETWORKS, INC.

Plaintiff/Counterclaim-Defendant,

v.

VERIZON COMMUNICATIONS INC., VERIZON
SERVICES CORP., VERIZON VIRGINIA INC.
AND VERIZON SOUTH INC.,

Defendants/Counterclaim-Plaintiffs.

Civil Action No. 2:10-cv-248
RAJ/DEM

**DECLARATION OF MICHAEL J. WAGNER IN SUPPORT OF PLAINTIFF'S
REPLY MEMORANDUM IN SUPPORT MOTION FOR AN AWARD OF
PREJUDGMENT INTEREST, POST-JUDGMENT INTEREST AND DAMAGES FOR
DEFENDANTS' CONTINUING INFRINGEMENT**

I, Michael J. Wagner, declare as follows:

1. I provided oral testimony during the trial and submitted expert reports in this matter on behalf of Plaintiff, ActiveVideo Networks, Inc. ("ActiveVideo"). I described my qualifications in my oral testimony and expert reports, and will not repeat them in this declaration. I have personal knowledge of the facts set forth in this Declaration. If called as a witness, I could and would testify competently to such facts under oath.

2. As I explained in my August 5, 2011 Declaration in Support of ActiveVideo's Motion For An Award Of Prejudgment Interest, Post-Judgment Interest And Damages For Defendants' Continuing Infringement, I have been asked to calculate the prejudgment interest that would be applied to the damages award in this matter.

3. The jury in this case returned a verdict for ActiveVideo and awarded damages against Defendants in the amount of \$115,000,000. The Court entered Judgment reflecting this

amount on August 2, 2011.

4. As also explained in my August 5, 2011 Declaration, I have also been asked to calculate damages for infringing sales by Defendants for the period since March 2011 until the date of judgment, August 2, 2011, as well as calculate prejudgment interest on these additional damages.

5. I have reviewed the information provided in the Declaration of Eric Bruno In Support of Verizon's Opposition to Plaintiff's Motion For An Award Of Prejudgment Interest, Post-Judgment Interest And Damages For Defendants' Continuing Infringement and Defendants' Opposition Memorandum. This information includes Verizon's average number of FiOS TV billable lines for the months of April 2011 through July, 2011.

6. Based on Verizon's average FiOS TV billable accounts for April through July 2011, along with Verizon's projection for August based on Verizon's actual average customer additions for 2010-11, I have calculated ActiveVideo's damages from Verizon's infringing conduct during this post-discovery period to be \$17,438,952 (Exh. 1, at 2 (Schedule 1.1), *see also* Defendants' Opposition at pg. 10; minor differences are due to rounding).

7. Using those figures provided by Verizon, I have also calculated the total prejudgment interest due on the damages from January 2006 to August 2, 2011 to be \$6,687,511. (Exh. 1, at 2 (Schedule 1.1)).

8. In addition, using those figures provided by Verizon, I have calculated ActiveVideo's total prejudgment damages, including prejudgment interest, to be \$139,126,462. (*Id.*)

9. In making these calculations, I employed the same methodology explained in my August 5, 2011 Declaration. Specifically: (1) I determined the weighted average prime interest

rate that prevailed during each quarter of the period since first infringement in the first quarter of 2006 (Exh. 1, at 3-4 (Schedule 1.2)); (2) I allocated proportionally the damages awarded by the jury to the infringing sales (Exh. 1, at 5-7 (Schedule 1.3)); (3) I assumed that the royalty payments were paid quarterly, and due thirty days after the last day in the quarter, and (4) by compounding quarterly and using the weighted average prime interest rate for each quarter, I calculated the prejudgment interest due on the damages awarded by the jury for each quarter (Exh. 1, at 3 (Schedule 1.2)).

* * * *

I declare under penalty of perjury that the foregoing is true and correct. Signed this 25th day of August 2011 in Mountain View, California.



Michael J. Wagner

Dated: August 29, 2011

Respectfully submitted,

/s/ Stephen E. Noona

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CERTIFICATE OF SERVICE

I herby certify that on August 29, 2011, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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